

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE,	:	
INC., ATX, ATX II AND WILDERNESS	:	Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY	:	MDL No. 1373
LITIGATION	:	(centralized before the
_____	:	Honorable Sarah Evans Barker)
	:	
THIS DOCUMENT RELATES TO	:	
CLASS ACTION MASTER	:	
COMPLAINT	:	
_____	:	

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Class Plaintiffs hereby move for class certification, pursuant to Rule 23 of the Federal Rules of Civil Procedure, of the Classes and Subclasses, and on the claims for relief, set forth in the Master Complaint. This Motion is based on Plaintiffs' Opening Brief in Support of Plaintiffs' Motion for Class Certification, Plaintiffs' accompanying papers in support of their Motion for a Preliminary Injunction, including the accompanying Declarations and Affidavit, all pleadings and papers on file in this action, and such other matters as may be presented to the Court before or at the time of the hearing.

Representative Plaintiffs Gary Gustafson, Michael Devening, William Wehking, Kathleen Wehking, Allison Simmons, Sue Pledger, Margaret Naylor, Richard Atkinson, Lynn Harkness, Edwin Hulse, Ryan Wallace, Timothy Trouy, Richard Olson, Deborah Kean, Mary Hartman, Joan M. Caden, Judy Latonis, Susan P. Grayson, Jennifer L.

Hakker, Michael Huber, Kurt Kellerman, William Moran, Donita Qualey, Alan Simpson, Jeana Wonnacott, Richard Glover, and Neal Zimmerman ("Representative Tire Plaintiffs")

seek certification of the Tire Class, initially defined as:

All persons and entities in the United States who own or lease, or owned or leased, vehicles that are or were equipped with Firestone-brand ATX, ATX II, Firehawk ATX, ATX 23 Degree, Widetrack Radial Baja, Wilderness, or other comparably designed or manufactured Firestone-brand, steel-belted radial tires ("Tires").

And of Subclasses initially defined as:

- (a) All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Tires subject to the August 9 Recall ("Recall Subclass");
- (b) All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Tires not subject to the August 9 Recall, but are subject to NHTSA's September 1, 2000 Consumer Advisory ("Consumer Advisory Subclass");
- (c) All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Tires not subject to the August 9 Recall or NHTSA's September 1, 2000 Consumer Advisory ("Other-Tire Subclass");
- (d) All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Tires that failed, resulting in property damage ("Property Damage Subclass");
- (e) All persons and entities who own or lease, or owned or leased, Ford Explorers that are or were equipped with Tires ("Explorer Subclass"); and
- (f) All persons and entities domiciled or residing in the State of Louisiana who bought or leased vehicles in Louisiana that are or were equipped with Tires, for purposes of the Louisiana redhibition claims asserted herein ("Redhibition Subclass").

The Proposed Representatives for each of the above-listed subclasses are set forth on Exhibit “A” hereto. Their Affirmations of Fact accompanying this Motion.

Representative Plaintiffs Diana Grant, Arlene Romano and Jane Lill (“Representative Explorer Diminution Plaintiffs”) seek certification of the Explorer Diminution Class, initially defined as:

All residents of the United States who purchased, owned or leased new or used Ford Explorers at any time during the period from 1990 to the present and who either (1) currently own, lease, or operate the vehicle(s) (the “Current Explorer Subclass”); or (2) sold, traded or otherwise disposed of such vehicle(s) or whose lease for such vehicle expired or otherwise terminated between August 9, 2000 and the later of the date of class certification or the dissemination of class notice (the “Former Explorer Subclass”).

Excluded from both the Tire Class and the Explorer Diminution Class are (a) Defendants and any entity in which any Defendant has a controlling interest, and their legal representatives, officers, directors, assigns and successors; (b) the District Judge, any Magistrate Judge, and any Special Master to whom this case is assigned, and any member of their immediate families; (c) all claims for personal injury or wrongful death; and (d) to the extent the class certification order permits exclusion, all people who submit timely and otherwise proper requests for exclusion from the Classes.

The Representative Tire Plaintiffs seek certification of the Tire Class and its subclasses under Rule 23(b)(2) and/or Rule 23(b)(3). The Representative Explorer Diminution Plaintiffs seek certification of the Explorer Diminution Class under Rule 23(b)(2) and/or Rule 23(b)(3).

As set forth in Plaintiffs' Opening Brief in Support of Plaintiffs' Motion for Class Certification, the Classes meet all requirements for class certification under Rule 23(a)(1)-(4), including the numerosity of Class members, the presence of issues of law or fact common to all Class members, the typicality of the named Plaintiffs' claims, and the adequacy of representation of the Classes, including one or more Plaintiffs to represent each of the proposed Subclasses.

Certifying the proposed Classes under Rule 23(b)(2) is proper with respect to their declaratory, equitable and injunctive relief claims because the Defendants have acted and continue to act and refuse to act on grounds generally applicable to each Class.

In addition, the damage claims of the Tire Class and the Explorer Diminution Class can be maintained under Rule 23(b)(3). Both Classes meet the requirements that common issues predominate over individual ones. The most significant questions of law and fact at issue concern the Defendants' knowledge, conduct and duty in the design, making, and marketing of their products (Tires and Explorers) to the public, and whether Defendants violated the law in so doing. These common questions of law and fact are detailed in paragraphs 141 through 197 of the Master Complaint.

Proceeding as a class action is superior to other available methods for the fair and efficient adjudication of this controversy. A class action preserves judicial resources by avoiding duplicative lawsuits, repetitious discovery and inconsistent rulings on Class claims for equitable relief, and provides fair and efficient access to adjudication for damages claims that are meritorious, yet too small to warrant the expense of individual litigation.

Plaintiffs identify the following as expert witnesses on certification-related issues:

1. Professor Samuel Issacharoff, of Columbia University School of Law, whose Declaration addressing predominance, manageability, and superiority, with an emphasis on state consumer protection laws, accompanies this Motion;

2. Todd Hilsee, President of Hilsoft Communications, of Philadelphia, Pennsylvania, a class notice expert who was previously deposed, on October 2, 2000, in the transferred Gustafson action, who submitted a Declaration on Emergency Corrective Notice therein in September, 2000, and whose Affidavit on Notice accompanies this Motion;

3. Professor E. Hunter Taylor, Jr., Professor Emeritus of Law and Adjunct Lecturer in Law at Rutgers-Camden School of Law, an expert on the substantive law of restitution, breach of express warranty, breach of the implied warranty of merchantability, and the Uniform Commercial Code, and whose Declaration accompanies this Motion.

WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Class Certification.

Dated: February 2, 2001

Respectfully submitted,

**COHEN & MALAD, P.C.**

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Exhibit A

**REPRESENTATIVE PLAINTIFF BY CLASS AND SUBCLASS**

<b>TIRE CLASS</b>	
All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Firestone ATX, ATX II, Wilderness, or other comparably designed or manufactured Firestone steel-belted radial tires ("Tires").	
<b>Subclass</b>	<b>Representative Plaintiff</b>
<u>Recall Subclass:</u> All persons and entities who own or lease, or owned or leased as of August 9, 2000, vehicles that are or were equipped with Tires subject to Firestone's voluntary recall implemented August 9, 2000;	Richard Glover, Sue Pledger, Alan Simpson, James Stone, Richard Atkinson, Edwin Hulse, James Hartman, Mary Hartman
<u>Consumer Advisory Subclass:</u> All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Tires not subject to Firestone's voluntary recall implemented August 9, 2000, but recommended to be recalled by the National Highway Traffic Safety Administration in its September 1, 2000 <u>Consumer Advisory</u> ;	Lynn Harkness, Ryan Wallace
<u>Other-Tire Subclass:</u> All persons and entities who own or lease, or owned or leased, vehicles that are or were equipped with Tires not subject to Firestone's voluntary recall implemented August 9, 2000, and not recommended to be recalled by the National Highway Traffic Safety Administration in its September 1, 2000 <u>Consumer Advisory</u> ;	Michael Devening, Leroy Eberly, Heather Gaudet, Susan Grayson, Gary Gustafson, Jennifer Hakker, Michael Huber, Kurt Kellerman, Michael Louridas, Dennis Mickunas, William Moran, Margaret Naylor, Donita Qualey, Esther Siewert-Sitzmore, Allison Simmons, Kathleen Wehking, William Wehking, Jeana Wonnacott, Neal Zimmerman, Judy Latonis Joan M. Caden, Deborah Kean, Richard Olson, Mattie Rule, Timothy Trouy
<u>Property Damage Subclass:</u> All persons and entities whose Tires failed with resultant property damage;	Richard Glover, Kurt Kellerman, Alan Simpson, Richard Atkinson



<p><u>Explorer Subclass:</u> All persons and entities who own or lease, or owned or leased, Ford Explorers or Mercury Mountaineers that are or were equipped with the Tires; and</p>	<p>Michael Devening, Leroy Eberly, Richard Glover, Susan Grayson, Gary Gustafson, Jennifer Hakker, Michael Louridas, Dennis Mickunas, William Moran, Margaret Naylor, Sue Pledger, Donita Qualey, Alan Simpson, James Stone, William Wehking, Richard Atkinson, Edwin Hulse, Judy Latonis, Joan M. Caden, James Hartman, Mary Hartman, Mattie Rule</p>
<p><u>Redhibition Subclass:</u> All persons and entities domiciled or residing in the State of Louisiana who purchased in Louisiana and who own or owned, or lease or leased, vehicles that are or were equipped with the Tires for purposes of the Louisiana redhibition claim.</p>	<p>Heather Gaudet, Kurt Kellerman, Donita Qualey, Edwin Hulse, Ryan Wallace</p>

<b>VEHICLE DIMINUTION OF VALUE CLASS</b>	
<b>Class</b>	<b>Representative Plaintiff</b>
All residents of the United States who purchased, owned or leased new or used Ford Explorers or Mercury Mountaineers at any time during the period from 1990 to the present and who either (1) currently own the vehicle(s), or (2) sold, traded or otherwise disposed of such vehicle(s) or whose lease for such vehicle expired or otherwise terminated between August 9, 2000 and the later of the date of class certification or the dissemination of class notice.	Diana Grant, Arlene Romano, Jane Lill